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Message Text

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ACTION EA-09

INFO OCT-01 IO-11 ISO-00 CIAE-00 DODE-00 PM-04 H-02 INR-07

L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06

AID-05 COME-00 EB-07 FRB-03 TRSE-00 XMB-02 OPIC-03

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FM AMEMBASSY MANILA
TO SECSTATE WASHDC 3906
INFO USMISSION GENEVA

C O N F I D E N T I A L MANILA 4955

E.O. 11652: GDS
TAGS: MARR, ETRD, RP US
SUBJECT: SECRETARY PATERNO COMMENTS ON PROBLEMS AFFECTING
AMERICAN BUSINESS COMMUNITY

REF: MANILA 4127

1. SUMMARY AND INTRODUCTION: E/C COUNSELOR MET WITH INDUSTRY SECRETARY PATERNO TO FOLLOW UP ON AMBASSADOR'S CONVERSATION WITH PRESIDENT MARCOS (REFTEL) AND TO DETERMINE MORE PRECISELY WHERE WE STAND ON ISSUES AFFECTING U.S. BUSINESS COMMUNITY WHICH HAD, INTER ALIA, BEEN SUBJECT OF THAT DISCUSSION. PATERNO WAS AS USUAL PRAGMATIC AND CONSTRUCTIVE. ON PROBLEM OF ANTI-DUMMY LAW, HE APPEARS TO HAVE WORKED OUT MODUS VIVENDI WITH JUSTICE DEPARTMENT WHICH SHOULD SATISFY U.S. BUSINESS. AFTER DISCUSSION OF OTHER ISSUES, HE SUGGESTED TRIPARTITE MEETING OF AMCHAM, EMBASSY, AND HIMSELF TO DRAFT AGREED MEMORANDUM WHICH WOULD CLEARLY DEFINE ISSUES. MEETING NOW SCHEDULED FOR NEXT WEEK. THERE FOLLOWS DISCUSSION OF SPECIFIC POINTS DISCUSSED. END SUMMARY

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A. PATERNO SAID THAT IN HIS VIEW, IT IS NECESSARY TO COMPARTMENTALIZE QUESTION. JUSTICE SECRETARY ABAD SANTOS RULING APPLIES ONLY TO "NATIONALIZED OR PARTIALLY NATIONALIZED" ACTIVITIES. THEREFORE COMPANIES WITH MAJORITY OF FOREIGN OWNERSHIP ARE EXCLUDED. SECOND CATEGORY ARE 60 PERCENT PHILIPPINE 40 PERCENT FOREIGN COMPANIES, SO STRUCTURED IN ORDER TO COMPLY WITH LAND HOLDING REQUIREMENTS OF CONSTITUTION. IN THE CASE OF COMPANIES TO WHICH LAND OWNERSHIP IS INCIDENTIAL TO THEIR PRINCIPAL PURPOSE, ABAD SANTOS HAS ASSURED PATERNO HE WILL NOT PRESS THE ISSUE AND IS WILLING SO TO STATE IN WRITING IF NECESSARY. IN THIS CONNECTION, PATERNO NOTED THAT SAN MIGUEL CORPORATION (SMC) HAS ASKED FOR EXCLUSION FROM ANTI-DUMMY. BOI IN TURN REQUESTED SMC TO DESCRIBE ITS ACTIVITIES. IF, AS EXPECTED, SMC'S REPLY INDICATES NO ACTIVITIES SUBJECT TO ANTI-DUMMY LAW, IT WILL BE SO INFORMED. IF NOT, ANOTHER SOLUTION WILL BE SOUGHT.

B. IN THIRD CATEGORY, PATERNO PLACED COMPANIES ACTIVE IN FIELDS SUCH AS FORESTRY, MINING OR FISHING WHERE PROVISIONS OF ANTI-DUMMY LAW CLEARLY APPLY. HERE SOLUTION SIMILAR TO THAT IN CASE OF ATLAS MINING WOULD APPLY. AS LONG AS ATLAS CONTINUES WITH NEW DEVELOPMENT, STATUS OF PIONEER INDUSTRY EXISTS AND FOREIGNERS MAY BE OFFICERS. (NOTE: THIS CAN OBVIOUSLY BE INDEFINITE.)

C. BANKS, HE SAID, ARE A SPECIAL CASE, AND IN ANY EVENT ARE NOT HIS PROVINCE. HOWEVER, HE OBSERVED, DEFINITION OF "TECHNICAL PERSONNEL" HAS NEVER BEEN SPELLED OUT. THE CENTRAL BANK HAS ALWAYS REQUIRED THAT OFFICERS BE TECHNICALLY QUALIFIED IN BANKING, AND ANTI-DUMMY DOES NOT IN HIS VIEW SPECIFICALLY PRECLUDE SUCH TECHNICALLY QUALIFIED OFFICERS FROM BEARING CORPORATE TITLES.

3. LAND DIVESTMENT
PATERNO SAID IT ALSO NECESSARY TO BE SPECIFIC HERE. THERE ARE FOUR PRINCIPAL CATEGORIES: (1) SALE AND LEASE-BACK ON COMMERCIAL TERMS ON ARM'S-LENGTH BASIS; (2) SALE AND LEASE-BACK TO JOINT VENTURE COMPANY SUCH AS PENSION FUND; (3) SALE AND LEASE-BACK TO GOP ENTITY (E.G., NATIONAL DEVELOPMENT
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CORPORATION); AND (4) DONATION AND LEASE-BACK TO CHARITABLE ORGANIZATION. ONLY LATTER TWO CATEGORIES PRESENT PROBLEMS AND IT MIGHT BE POSSIBLE TO RESOLVE THESE ON CASE BY CASE BASIS WITHOUT NECESSITY FOR GENERAL RULING. (NOTE: WE ARE LESS SANGUINE.) HE THOUGHT AMCHAM SHOULD PREPARE LIST OF SPECIFIC PROBLEMS ON CASE BY CASE BASIS. E/C COUNSELOR AGREED THIS WOULD DO NO HARM AND SAID THAT AMCHAM APPRECIATED FACT THAT GOP IS AGAIN GRANTING EXTENSIONS TO COMPANIES

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REQUESTING THEM.

4. FORESHORE LEASES - PATERNOR SAID THAT THIS IS HIGHLY COMPLICATED AREA AND THAT HE WOULD APPRECIATE SPECIFIC DELINEATION OF PROBLEM BY AMCHAM.

5. ACETATE TOW - E/C COUNSELOR REVIEWED PROBLEM, POINTING TO EVIDENT DISCRIMINATION AND OUTLINING WHY FOR VARIETY OF REASONS PD 750 NOT IN GOP BEST INTEREST. PATERNO SAID HE WOULD CALL MEETING OF THREE COMPANIES CONCERNED TO DISCUSS THE ISSUE.

6. ACCESS TO MONEY MARKET - NOTING THAT THIS HAD NOT BEEN ON THE AMBASSADOR'S AGENDA, E/C/COUNSELOR SAID IT WAS NEVERTHELESS ISSUE OF GROWING CONCERN TO U.S. COMPANIES. AMCHAM WOULD SHORTLY BE SENDING PATERNO A LETTER INDICATING CONCERN WITH PROPOSAL THAT GOP PROMULGATE SET OF REGULATIONS DEFINING CONDITIONS UNDER WHICH FOREIGN FIRMS MIGHT HAVE ACCESS TO MONEY MARKET. THIS WOULD IMPOSE UNDESIRABLE RIGIDITIES. LETTER WOULD INSTEAD PROPOSE THAT BOI EXPAND ITS FUNCTIONS TO EXAMINE DEGREE OF ACCESS ON CASE BY CASE BASIS. PATERNO SEEMED RECEPTIVE TO NOTION.

7. MEETING WITH AMCHAM - TOWARD END OF CONVERSATION, PATERNO SAID THAT HE THOUGHT IT WOULD BE USEFUL TO CONVENE MEETING OF HIMSELF, EMBASSY, AND AMCHAM TO PREPARE AGREED LIST OF CLEARLY DEFINED ISSUES. HE THOUGHT EMBASSY PARTICIPATION IN WHAT NORMALLY SHOULD BE BILATERAL MEETING BETWEEN AMCHAM AND HIMSELF APPROPRIATE BECAUSE USG AND GOP WERE ACTIVELY INVOLVED IN ECONOMIC NEGOTIATIONS IN WHICH THESE ISSUES WOULD SURELY SURFACE. IT WOULD BE WELL TO KNOW PRECISELY WHAT WE ARE TALKING ABOUT. HE SAID LAST SUCH LIST WAS PREPARED IN DECEMBER 1973 AND TIME HAS COME FOR CONFIDENTIAL

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NEW INVENTORY. E/C COUNSELOR AGREED. AMCHAM SUBSEQUENTLY ENTHUSIASTICALLY CONCURRED AND MEETING SET FOR APRIL 14.
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